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Attorney for Defendant

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ACUMED LLC, a Delaware limited liability
company,

No. CV04-1498-BR

Plaintiff

**DEFENDANT'S MOTION
TO COMPEL COMPLIANCE
WITH SUBPOENA**

v.

SMITH & NEPHEW, INC., a Delaware
corporation,

Defendant.

LR 7.1

Counsel for Defendant has conferred with counsel for Third-Party Stryker Corporation,
but has been unable to resolve the issues herein. Counsel for Plaintiff Acumed LLC does not
oppose this motion

LR 7.1(a)

Should Third-Party Stryker Corporation be compelled to produce, or to permit Plaintiff
Acumed LLC to produce, a full copy of the summary judgment briefing and various depositions

taken in the lawsuit *Acumed LLC v. Stryker Corp. et al.*, No. CV 04-513-BR (D. Or. Filed April 14, 2004) (the “Stryker Lawsuit”)?

MOTION

Defendant Smith & Nephew, Inc., hereby brings this Motion to Compel with respect to a subpoena that it has served upon Stryker Corporation in this judicial district. A copy of said subpoena with proof of service is attached as Exhibit A to the memorandum in support of this motion filed simultaneously herewith.

Specifically, Smith & Nephew seeks access to all of the pleadings, briefs, and discovery from the Stryker Lawsuit, which involves Plaintiff Acumed’s assertions of infringement of the same patent at issue in this case, USPN 5,472,444, against Stryker Corporation and other related Defendants.

The instant dispute arises because Stryker has refused to produce (or to give its consent to Acumed to produce) the following information:

- The summary judgment briefing from the Stryker lawsuit;¹
- The deposition of Stryker witness Raymond Augustin and the exhibits thereto; and
- The depositions of Acumed’s testifying experts.

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¹ Smith & Nephew was able to obtain a copy of Stryker’s Motion for Summary Judgment and related materials because these documents were not filed under seal, but it does not have a copy of Acumed’s Response to Stryker’s Motion or Stryker’s Reply Brief, or any supporting materials, because both of these filings were made under seal.

This motion is based on the provisions of FRCP 26, 37 and 45, and the memorandum submitted herewith.

DATED: May 23, 2005.

CHERNOFF, VILHAUER, McCLUNG &
STENZEL, LLP

/s/ Susan D. Pitchford

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANT'S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA** has been served upon the following attorneys on May 23, 2005 as follows:

By Facsimile and First Class Mail

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DATED: May 23, 2005.

CHERNOFF, VILHAUER, McCLUNG
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